



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2004

Ms. Linda Stewart
Administrative Manager
High Point Water Supply Corporation
16986 Valley View Road
Forney, Texas 75126

OR2004-2783

Dear Ms. Stewart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199002.

The High Point Water Supply Corporation (the "corporation") received a request for information. You claim that portions of the requested information that contain customer information are confidential based on section 182.051 of the Utilities Code. You also cite sections 552.023 and 552.024 of the Government Code for this customer information. In addition, you raise section 552.102 of the Government Code as an exception to the disclosure of employee tax information and sections 552.131 and 552.136 of the Government Code as exceptions to the disclosure of account numbers and checking account numbers. Finally, you ask whether you can charge the requestor for the time you spend editing confidential information. We have considered your claims and reviewed the submitted information.

We begin with a procedural matter. Pursuant to section 552.301(e), when a governmental body seeks an open records ruling from this office, it is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Because the exceptions you raise, if applicable, are a compelling reason to withhold the information, we will consider your claims.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 182.052 of the Utilities Code provides in relevant part:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

Util. Code § 182.052(a). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. *Id.* § 182.051(4). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to section 182.052(a)'s disclosure prohibition. *See id.* § 182.054. You have provided no information to allow us to conclude that these exceptions apply in this case. We note that the information at issue contains addresses of members of the corporation. We understand you to represent that the members are the corporation's customers. You state that many customers have signed a form requesting confidentiality. We conclude that if the election for privacy was made prior to the date the corporation received the present request, the

corporation must withhold the customers' addresses based on section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.¹

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. An "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to obtain money, goods, services or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. *Id.* § 552.136(a). We find that the corporation must withhold the bank account CD numbers based on section 552.136. In addition, the information includes account numbers of several companies, such as Verizon, Cingular Wireless, A T & T, McGinty Hardware, and Office Max. Based on section 552.136, the corporation must withhold the account numbers of these and similar companies.

You also raise section 552.131 of the Government Code which excepts from disclosure certain trade secret or commercial or financial information if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay or expand in or near the territory of the governmental body. As you have not explained that the information relates to economic development negotiations between the corporation and a business prospect or how the information is either a trade secret or commercial or financial information covered by the provision, we cannot conclude that section 552.131 applies to the information at issue.

You ask whether the corporation must withhold employee tax information. You raise section 552.102, which excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). However, because you do not inform us that any of the information you have submitted to this office is information in a personnel file, we find that none of the submitted information may be withheld under section 552.102.

Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. However, you have not demonstrated that any of the submitted information is made confidential under this federal law. *See* Gov't Code § 552.301(e)(2) (requiring governmental body to label the submitted information, or a representative sample, to indicate which exceptions apply to which parts of information). Furthermore, the submitted information does not appear to include confidential tax return information.

¹ In addition, in light of this conclusion, we need not consider your claim under sections 552.023 and 552.024.

Finally, you ask whether the corporation can charge for the time spent editing the confidential information from the disk. Please direct all questions you may have about charges for producing copies of requested public information to Ms. Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

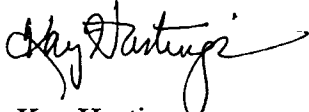
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Hastings". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 199002

Enc: Submitted disks

c: Mr. Al Adams
c/o High Point Water Supply Corporation
16986 Valley View Road
Forney, Texas 75126
(w/o enclosures)